

10/529,573

REMARKS

Upon receipt of this response, the Examiner is respectfully requested to contact the undersigned representative of the Applicant to arrange a telephone interview concerning the inventive merits of this application.

This application is rejected under 35 U.S.C. § 112, first paragraph, for the reasons noted in the official action, i.e, there is an inadequate written description of what comprises the brace being releasably securable to a respective one of the adjustable props . The inadequate written description rejection is acknowledged and respectfully traversed in view of the following remarks.

Claims 21 and 23 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for the reasons noted in the official action. The rejected claims are accordingly amended, by the above claim amendments, and the presently pending claims are now believed to particularly point out and distinctly claim the subject matter regarded as the invention, thereby overcoming all of the raised § 112, second paragraph, rejections. The entered claim amendments are directed solely at overcoming the raised indefiniteness rejections and are not directed at distinguishing the present invention from the art of record in this case.

Claims 15-17 and 19-24 are rejected, under 35 U.S.C. § 102, as being anticipated in view of Blier '057 (U.S. Patent No. 4,371,057). The Applicant acknowledges and respectfully traverses the raised anticipatory rejection in view of the following remarks.

Before discussing the applied prior art in detail, the Applicant would first like to summarize the inventive aspects of the presently claimed invention. As presently claimed, the present invention relates to and covers an access unit for location in an opening in an upper floor. The access unit comprises a support frame having a generally O-shaped configuration with an open central region. The support frame including U-shaped first and second members with an open end of each U-shaped member face one another. Each of the first and the second members comprises a base frame of fixed width defining one end of the open central region, and a pair of spaced apart side arms extending parallel to one another from opposite ends of the base frame. The pair of side arms of the first member are telescopically received within the pair of side arms of the second member to facilitate adjustment of a length of the

open central region. The open central region, defined by the base frame and the pair of spaced apart side arms of the first member and the base frame and the pair of spaced apart side arms of the second member, is completely unobstructed and open without anything being located between the base frames for the first and the second members so as to allow unhindered passage of a person through the open central region. The telescopic adjustment of the pair of spaced apart side arms facilitates desired spacing of the base frame of the first member from the base frame of the second member over a range of distances. Each of the spaced apart side arms of the second member having a clamp for temporary securing of the side arms of the first member to the side arms of the second member at a pre-determined relationship and maintaining the desired spacing of the base frame of the first member from the base frame of the second member.

According to the presently claimed invention, only the second member has a pair of spaced apart vertically adjustable props which are pivotably attached adjacent the base frame of the second member for supporting the second member at a desired level. The first member has a flange arranged for overlying a support surface, at the first location, so that the flange overlays a surface of the first location and solely vertically supports the first member at the first location. The pair of spaced apart adjustable props of the second member facilitate positioning of the second member at substantially a same level as the first member so as to position the support frame of the access unit within a stairwell in a substantially horizontal orientation.

Turning now to the applied art, Blier '057 relates to a telescopic scaffold unit 10 which provides an openwork central section with telescopic legs 12 at both ends. The scaffold unit 10 is intended to support a horizontal working platform 40 regardless of the height of the floor under each leg 12. Figure 4 of Blier '057 teaches the scaffold unit 10 being used on stairs. In this figure, the legs 12" are supported on a step that is higher than the surface on which the opposite legs 12' are supported. As such, when the scaffold unit 10 is used on stairs one set of legs, in this case legs 12", completely pass through the sleeves 14 and extend well above the horizontal support member 23 and the supporting board 40. This arrangement of the scaffold unit according to Blier '057 prevents full access to work surfaces adjacent the side of the scaffold unit and inhibits, at that end of the scaffold unit, free passage on/off the scaffold

unit. Although Figure 4 of Blier '057 shows that the scaffold unit is being used on stairs, Figure 4 does not show that the scaffold unit is used in conjunction with an opening in a second story floor of a dwelling under construction as discussed in the application. The constructional unit of the application is to be used in an opening of a dwelling under construction, such that a person can walk on the unit across the hole while at the same time, because of the central opening and the closure member 40 formed as a folding lattice, a person is able to see through the construction unit, fold the closure member 40 and pass through the central opening, if it is perceived as being safe to do so.

In further distinction from the claims of the application, Blier '057 teaches that the telescopic unit 10 has telescoping transverse support members 32, 33 each with two elongate bars 32', 32"; 33', 33", which are interconnectable by way of fasteners 34. In this manner "the length of the support members 32 and 33 may be varied" (see column 3, lines 32-35). This is in direct opposition to the claims which state that the base members are of *fixed* width.

It is seen in Figures 1 and 2 of Blier '057 that the legs 12 across the width of the unit 10 are able to be adjusted so as to be at an angle relative to one another. With this ability, for reasons of stability the scaffold unit 10 has *two* transverse support members 32, 33 which extend between the legs 12. The need of *two* transverse support members 32, 33 add additional weight and cost to the scaffold unit 10 and increase the amount of time needed to set up the scaffold unit 10. The extra transverse support member is not required with the design of the claimed construction unit.

Claims 18 and 25 are rejected, under 35 U.S.C. § 103(a), as being unpatentable over Blier '057 in view of Testu '075 (FR 2,663,075). The Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the above amendments and the following remarks.

Testu '075 relates to telescoping legs 12, 13 which slide within a sleeve member 14 such that the height of the of the legs 12, 13 can be adjusted. These legs 12, 13 and the sleeves 14 are *rigidly* secured to the respective support members 21 and side supports 24 at the very ends thereof, as best seen in Figures 1 and 4, for example. They are also secured to the support members 32. The claims of the application are distinct from the teachings of Testu

`075 as the claims of the application include the limitations that the telescoping props are *pivotably* fixed to a respective one of the side arms at a point on the side arms that is *spaced from* the base frame.

In view of the foregoing, the Applicant acknowledges that the additional reference of Testu `075 may arguably relate to the features indicated by the Examiner in the official action. Nevertheless, the Applicant respectfully submits that the combination of the base reference of Blier `057 with this additional art of Testu `075 still fails to in any way teach, suggest, disclose or remotely hint at the above distinguishing features of the presently claimed invention. As such, all of the raised rejections should be withdrawn at this time in view of the above amendments and remarks.

In order to emphasize the above noted distinctions between the presently claimed invention and the applied art, the independent claim 15 now recites the feature of "only the second member having a pair of spaced apart vertically adjustable props which are pivotably attached adjacent the base frame of the second member for supporting the second member at a desired level; the first member having a flange arranged for overlying a support surface, at the first location, so that the flange overlaps a surface of the first location solely vertically supports the first member at the first location; and the pair of spaced apart adjustable props of the second member facilitate positioning of the second member at substantially a same level as the first member so as to position the support frame of the access unit within a stairwell in a substantially horizontal orientation." Independent claim 22 recites similar limitations. It is respectfully submitted that such features are believed to clearly and patentably distinguish the presently claimed invention from all of the art of record, including the applied art.

The Applicant asserts that new claims 26-33 are distinct from the teachings of the references in that Blier `057 and/or Testu `075 fail to in any way teach, suggest, disclose or remotely hint at the claimed limitations of the flange.

The Examiner has previously related that Blier `057 teaches a "base frame... having a flange for overlying a support surface... to facilitate retaining the base frame... at a first location" and has asserted that "the base frame members are made of two back to back angle members whose flange portion is capable of overlying a stair" (final official action, pgs. 5-6). The

reference teaches right angle flat bars 32', 32" with a horizontal top portion which constitutes a flat support surface 29 for supporting a support platform 40 (col. 3, Ins. 56-62).

As recited in the claims, a flange extends from the base of the first support member and contacts and overlays the surface of the upper floor along an edge of the passageway to support the first support member. In this manner one side of the support frame is supported, via the flange, by the upper floor so as to be located within the passageway and substantially coplanar with the upper floor.

The distinctions between the claimed flange and the top portion of the right angle bar taught by Blier '057 are significant enough that the Applicant respectfully asserts that improper hindsight reasoning may have been previously used when rejecting the claims. The Applicant contends that the scaffold taught by Blier '057 is supported only by four legs 12 and that the right angle bars could not be utilized in the manner suggested by the Examiner to support the scaffold on the surface of a floor in the manner claimed. In Fig. 4 of the reference, even if the legs 12 were removed from the scaffold, the scaffold would be supported by the sleeves 14 and not by either of the right angle bars extending between the sleeves 14. When viewed in profile as in Fig. 4, the right angle bars are not visible at all. The sleeves 14 would prevent the right angle bars from contacting and supporting the surface of the floor or the surface of one of the steps.

Next, the claims are distinct from the teachings of the references as Blier '057 and/or Testu '075 fail to in any way teach, suggest, disclose or remotely hint at the claimed limitation that the legs 12 are pivotable with respect to the horizontal support members 21, 23 which the Examiner considers to be similar to the claimed side arms. Although the legs 12 and the vertical sleeves 14 on one lateral side of the scaffold may be pivotable with respect to the legs 12 and the vertical sleeves 14 on the other lateral side of the scaffold (as seen in Fig. 1), the reference specifically teaches that connection between the legs 12 and the vertical sleeves 14 and the horizontal support member 21 is solid. In other words the legs 12 can not pivot with respect to the horizontal support members 21, 23 as claimed in the application.

The claims are distinct from the teachings of the references as Blier '057 and/or Testu '075 fail to in any way teach, suggest, disclose or remotely hint at the claimed limitation that the

props are attached at their ends to side arms in such a manner that the props only extend below to support frame. As see in Figs. 1, 2 and 4 of the reference, in each case, the legs 12 of the scaffold vertically extend both above and below what may be considered a horizontal support structure formed of elements 21, 23 and 32. In use, the claimed constructional unit is placed within a stairwell opening in a floor. The unit lies essentially flat with the floor surface and may include a platform which at least substantially encloses the opening. Because the unit, as claimed, does not include elements which extend above the platform, such as the legs of the prior art reference, people are able to traverse the floor opening on the platform without the hazards of tripping over elements extending above the level of the floor.

The claims of the application are distinct from the references as Blier '057 and/or Testu '075 fail to in any way teach, suggest, disclose or remotely hint at claimed limitation regarding the point along the horizontal tubular member 21 at which the legs 12 are connected. As can clearly be seen in the Figs. the legs are connected to the support frame at the corners, that is the joint between the support members 21, 32. In distinction, claim 29 includes the limitation that the props are attached to the side arms at a location along the side arms that is spaced from the end thereof that is coupled to the base or, in other words, the props are attached to the side arms at a location that is spaced from the corner formed by the arms and the base.

The limitations of the new and amended claims are believed to clearly distinguish the constructional unit from the teachings of the cited references. In view of the above, it is respectfully submitted that all of the raised rejections should be withdrawn at this time. If the Examiner disagrees with the Applicant's view concerning the withdrawal of the outstanding rejections or applicability of the Blier '057 and /or Testu '075 references, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied references, the raised rejection should be withdrawn at this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

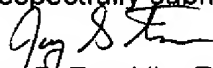
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In view of the foregoing, it is respectfully submitted that the raised rejections should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,



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